No. 88-1781

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE ALGOMA STEEL CORPORATION, LIMITED,
Petitioner,

v.

THE UNITED STATES and U.S. INTERNATIONAL TRADE COMMISSION,
Respondents,

and

LONE STAR STEEL COMPANY,
Respondent,

IPSCO, INC. and IPSCO STEEL, INC.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

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BRIEF OF AMICUS CURIAE CONSUMERS FOR WORLD TRADE IN SUPPORT OF THE PETITION

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INTEREST OF AMICUS CURIAE*

Consumers for World Trade ("CWT") is a nonprofit organization devoted to promoting free international trade for the economic benefit of consumers in the United States. CWT believes that free trade benefits consumers by ensuring greater competition in the market place, thereby creating lower prices, wider consumer choice, greater innovation, and greater responsiveness to consumer preferences.

CWT supports the proper enforcement of antidumping laws to remedy unfair trade practices that injure domestic industries. However, CWT strongly opposes the misuse of the United States trade remedy laws to erect protectionist barriers against fairly traded imports. This case presents a fundamental issue that goes to the very purpose of the U.S. antidumping law. The resolution of the issue presented by this case will affect virtually every International Trade Commission ("ITC") determination under the antidumping law, potentially affecting billions of dollars of trade. As such, this case is of great concern to U.S. consumers, who will ultimately be hurt if the decision of the Federal Circuit is not reversed.

ARGUMENT

I. The Federal Circuit's Decision Distorts the Purposes of the U.S. Antidumping Law by Allowing the ITC to Consider the Impact of Fairly Traded Imports in Making Its Causation Analysis.

The consequences of this case extend far beyond the immediate parties. The Federal Circuit has ruled

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* As required by Rule 36 of the Supreme Court Rules, written consent for the filing of this brief was obtained from all parties. Copies of these consents are being filed concurrently herewith.

that the ITC may base an affirmative final injury determination in part on the impact of *fairly traded* imports. Because an affirmative injury determination is a legal prerequisite to the issuance of an antidumping duty order, the decision in this case allows domestic producers to obtain protection from import competition without demonstrating that *dumping* has caused injury to the domestic industry. This is contrary to the antidumping law, and the Federal Circuit's decision should be reversed.

The U.S. antidumping law is intended to afford U.S. producers relief from *unfair* price discrimination. For this reason, the law requires U.S. producers to prove not only that imported goods are being sold at less than their home market price, but also that these "dumped" imports have caused material injury to a domestic industry before an antidumping order may be issued:

> This Act is not a "protectionist" statute designed to bar or restrict U.S. imports; rather, it is a statute designed free U.S. imports from unfair price discrimination practices. . . .
>
> . . .The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry.

S. Rep. No. 1298, 93rd Cong. 2d Sess. 179 (1974). The antidumping law, therefore, requires that the ITC must find a causal link between the dumping and any injury to the domestic industry that the ITC may find. Injury must be "by reason of" the dumped imports. *See* 19 U.S.C. § 1673 (1982 & Supp. IV 1986).

The House Ways and Means Committee stated in its report on the Trade Agreements Act of 1979,[1] which enacted the current version of the antidumping law, that:

> [M]aterial injury must be "by reason of" . . . less than fair value imports. . . . The law does not, however, contemplate that injury from such imports be weighted against other factors (e.g., the volume and prices of . . . imports sold at fair value, contraction in demand or changes in patterns of consumption . . . .

H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

To implement this Congressional intent, the law provides that the ITC should consider in its final determination whether a domestic industry has suffered material injury "by reason of imports . . . of the merchandise with respect to which [Commerce] has made an affirmative determination [of dumping]." 19 U.S.C. § 1673d(b)(1) (1982 & Supp. IV 1986).

II. Unless Remedied by This Court, the Federal Circuit's Decision Will Needlessly Hurt U.S. Consumers and Industry.

By allowing domestic industries to misuse the antidumping law to obtain protection from fairly traded imports, the effect of the Federal Circuit's decision in this case will be to protect inefficient U.S. industries. American consumers will pay the price for this unwarranted protectionism in the form of higher prices. American industry will also be harmed in the long run through lost jobs and the further decline in

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[1] Pub. L. No. 96-39, § 101, 93 Stat. 144, 150-89 (1979) (codified as amended at 19 U.S.C. §§ 1673-1677g).

the competitiveness of American industry in world markets.

CONCLUSION

For the reasons set forth above, CWT respectfully requests that the Petition for a Writ of Certiorari of Algoma Steel Corporation, Limited, be granted.

Respectfully submitted,

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